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VIA ECF

Honorable Jennifer L. Rochon United States District Court Southern District of New York 500 Pearl Street, Room 1920 New York, New York 10017

Re: Gabay v. Roadway Movers, Inc., et al., 1:22-cv-06901

Dear Judge Rochon:

I represent plaintiff Shalom Gabay. I respectfully request that the Court disregard defendants' arguments on the transportation worker exception to the Federal Arbitration Act, which defendants improperly raised for the first time in their reply brief in support of their motion to compel arbitration (ECF Doc. No. 24). The parties' joint status letter to the Court shows that defense counsel knew the transportation worker exception was central to its motion to compel arbitration. (ECF Doc. No. 12, ¶¶ 2(a) and (b).) Nonetheless, defendants failed to address that exception in their moving submissions. Their attempt to raise it for the first time in reply is improper. *See Knipe v. Skinner*, 999 F.2d 708, 711 (2d Cir. 1993).

Alternatively, I respectfully request permission to respond to those new arguments in a sur-reply. I also seek permission to submit a sur-reply to correct defendants' false claim that the arbitration agreement between Mr. Gabay and his employer is not within a contract of employment. (ECF Doc. No. 24 p. 4.) Based on that misrepresentation, defendants incorrectly assert that the transportation worker exception does not apply. *Id.* at 2-4. In fact, Mr. Gabay's employment agreement, annexed as Exhibit 2 to his declaration in opposition to the motion to compel arbitration, contains an arbitration agreement. (ECF Doc. No. 21-3, ¶ 14.) That employment expressly supersedes all prior agreements, including the previously executed Dispute Resolution Agreement on which defendants rely, stating that the employment agreement is the "entire agreement with the Company, superseding any previous . . . agreements with the Company or any officer or representative thereof." *Id.* ¶ 17.

Respectfully yours,

s/ANTHONY J. HARWOOD Anthony J. Harwood